BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DENNIS WURTZ	)	
Claimant	)	
	)	
VS.	)	
	)	
HOOD HEATING AND AIR CONDITIONING	)	
	)	
Respondent	)	Docket No. 1,010,775
	)	
AND	)	
	)	
ALLIED INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the August 31, 2006, Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on December 5, 2006.

APPEARANCES

John M. Ostrowski, of Topeka, Kansas, appeared for claimant. Jeffrey E. King, of Salina, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) adopted the reasoning of Dr. Chris Fevurly and found that claimant suffered a 10 percent whole body functional impairment as a result of his 2002 injury. The ALJ further found that claimant exercised good faith in attempting to retain his employment. The ALJ, however, found that claimant failed to make a good faith effort to find alternative employment and imputed a post-injury wage of $294.90, which

resulted in a 58 percent wage loss. The ALJ concluded that claimant suffered a task loss of 54 percent, using the average of Dr. Gregory Walker's 62.5 percent task loss and Dr. Fevurly's 45.45 percent task loss. Averaging the task loss of 54 percent and the wage loss of 58 percent, the ALJ awarded claimant a 56 percent work disability.

Respondent requests review of the ALJ's award of a work disability, arguing that claimant should be limited to the 10 percent impairment of function to the body as a whole as found by the ALJ. Respondent asserts that claimant did not make a good faith effort to keep the accommodated employment provided by respondent and that claimant was terminated for cause unrelated to his physical problems. Should a work disability be found appropriate, respondent argues that the task list of Karen Terrill is more accurate than that prepared by claimant's vocational expert, Doug Lindahl, but that neither physician's task loss opinion is accurate because both utilized restrictions that were given for injuries that are not the subject of this docketed claim. Accordingly, claimant's work disability, if any, should be based upon the average of a 0 percent task loss and no more than the 58 percent wage loss determined by the ALJ, which results in a 29 percent work disability. Although respondent argues that the task loss opinions of both physicians included restrictions for claimant's injuries that were the result of an earlier accident claimant had suffered with respondent, a claim that has been settled, respondent has made no request for a credit against any work disability award in this case, under either K.S.A. 44-501(c) or K.S.A. 44-510a.[1] Instead, respondent seeks to have the Board disregard the task loss opinions entirely.

Claimant denies that he was terminated for cause and claims that respondent's business was off and he was let go as the result of that economic pressure. He further argues that he did not have the job skills to successfully perform the accommodated job provided by respondent. Claimant contends he made a good-faith job search and argues that no post-injury wage should have been imputed. Nevertheless, claimant states the ALJ's award is "minimally correct"[2] and requests that the award be affirmed by the Board. As for the evidence of task loss, claimant contends that the physicians' opinions would be the same regardless of whether or not they considered claimant's prior injuries and restrictions because all of the same tasks would be eliminated utilizing only the restrictions for the 2002 back injury.

The ALJ's award of a 56 percent work disability exceeded the maximum allowed for a permanent partial disability award.[3] Accordingly, as a practical matter, a finding of a

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[1] See *Medina v. National Beef Packing Co.*, No. 231,412, 2006 WL 328195 (Kan. WCAB Jan. 27, 2006), and *Alvarez v. Bosler Brown & Assoc.*, No. 1,012,734, 2006 WL 328211, (Kan. WCAB Jan. 18, 2006).

[2] Claimant's Brief to the Appeals Board at 7 (filed November 17, 2006).

[3] K.S.A. 44-510f(a)(3).

good faith job search and a 100 percent wage loss would make no difference, as it would not increase the claimant's monetary award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant had worked for respondent for eight years as a service technician in heating, air conditioning, and refrigeration. He injured his neck, right shoulder, and low back while lifting a compressor on July 9, 2000. This accident was the subject of another docketed claim, No. 1,011,114. He received treatment for his injury and continued to work for respondent at his regular job. On September 26, 2002, claimant injured his low back while lifting refrigeration equipment onto a roof with a rope. These two work-related claims were consolidated, and claimant received an award in both cases. Both cases were appealed to the Board,[4] but the case involving the July 9, 2000, injury was settled and, therefore, Docket No. 1,011,114 is no longer before the Board.

About five days after claimant's September 26, 2002, injury to his low back, claimant developed leg pain. He was initially treated by Dr. Robin Hood, a chiropractor. Dr. Hood referred him to Dr. Ali Manguoglu, who performed surgery on his back on January 16, 2003. The surgery did not relieve claimant's symptoms.

Following surgery, claimant had physical therapy for six weeks followed by work hardening for six weeks. During the work hardening, claimant's back condition worsened. He was unable to do all the activities because the pain in his low back and leg got worse. He claimed his right leg was numb from his hip to his ankle. In May 2003, claimant was released by Dr. Manguoglu. A functional capacity evaluation recommended claimant lift no more than 60 pounds, but claimant said that Dr. Manguoglu told him 60 pounds was too high and reduced it to 50 pounds. Claimant was also told not to climb ladders. Claimant was still experiencing pain in his low back and right leg.

Eventually, claimant was seen by Dr. Jacob Amrani, who performed a second surgery on claimant's low back in January 2004. Dr. Amrani released him to return to work in June 2004 with no limitations. When claimant returned to work, however, he did not return to his regular job but was given a light duty job as a dispatcher. Claimant testified he was told by John Hood, the owner of respondent, that he was being placed in the position on a trial basis. Claimant stated that after he started the dispatcher job,

[4] Although respondent filed separate Applications for Review by the Workers Compensation Appeals Board in Docket Nos. 1,010,775 and 1,011,114, it has always been the Board's policy, whenever an Award is appealed that decided two or more consolidated claims, that an appeal of such an award listing any of the docketed claims is an appeal of all the docketed claims that were part of the award order.

respondent added other responsibilities, such as marketing and sales. Claimant had never performed work of that kind before. He said he worked to the best of his ability, but on October 28, 2005, he was placed on suspension. Eight to ten days after his suspension, claimant was terminated.

Mr. Hood testified that claimant was terminated for a variety of transgressions, including being late for work in the morning and returning late from lunch. Claimant also failed to schedule delivery of a unit, failed to inform respondent of a scheduled vacation of a coworker, and failed to complete some warranty forms. Mr. Hood said that claimant's problem was not lack of ability but failure to follow through.

Claimant admitted that he did not always get to work as early as Mr. Hood wanted him because he had to take his children to school. He also said that most of the time when he was marked late returning from lunch, it was because he would get stopped on his way out to lunch by a salesman or a service technician. He would then take his hour lunch after dealig with whatever that entailed. Then he would not be back at the time Mr. Hood thought he should be back because he started his lunch hour late. He admitted that once or twice he was late for personal reasons. And he admitted that there was an incident where a coworker told him he was taking vacation time and he did not record it as he should have. He also admitted incidents occurred involving a delivery truck being in Salina all day and his failing to make a telephone call concerning some kitchen brackets.

Claimant said that at first he was doing okay on the dispatcher job, but when the marketing and sales tasks were added, Mr. Hood told him he was not doing the job the way he wanted it done. However, at no time did anyone offer to train him or assist him in doing the sales and marketing job. Claimant contends he was not terminated for cause but to make a job for Mr. Hood's son, who was just out of high school. Mr. Hood said that the fact that his son was out of high school had no impact on his termination of claimant. Mr. Hood's son was scheduled to take a real estate licensing test and go to technical school to learn the heating, air conditioning, and plumbing trade.

Respondent argues that claimant was offered an accommodated job as a dispatcher that was within his physical restrictions. Later, claimant was given the responsibility of following up with customers to see if they needed preventative maintenance work. Respondent claims that claimant had the knowledge and skill to do this job but was terminated for his failure to communicate with customers and coworkers, for failing to be at work on time, and for failing to return from lunch on time. Claimant argues that this was a trial position and that Mr. Hood told him if he was suspended, the insurance carrier would put him into a training program or pay for schooling in marketing and sales.

After his termination from respondent, which is located in Concordia, claimant began a job search. His handwritten job search list was entered as exhibit No. 1 to claimant's April 27, 2006, deposition. It shows 130 businesses were contacted during the period from December 1, 2005, through April 24, 2006. The exhibit also contains a printed list of

additional contacts from the Cloud County Community College's Career Center in Concordia. Claimant said that he contacted some of the businesses more than once. Most of the businesses were located in Concordia, where claimant lives, but claimant also applied for jobs in Clifton, Clyde, Clay Center, Manhattan, Belleville, Miltonvale, Glasco, Salina, and Beloit. He admitted he applied for some jobs for which he was not qualified or that were outside his restrictions. He testified that he worked one day for a convenience store in Clyde, Kansas. He said he was supposed to have worked only six and one/half hours a day and earn $5.30 per hour with no fringe benefits. However, when he appeared at work the first day, he found that the convenience store extended the number of hours it wanted him to work. Claimant said if he had continued to work there and worked those additional hours, he would have lost his unemployment benefits. He said he could not afford to keep the job if he did not also receive the unemployment benefits. In other words, he would have lost money by working that job. He has continued looking for work.

Claimant said that his condition has gotten worse since his release from treatment by Dr. Amrani. He has pain in the center of his low back above the belt line and has pain and numbness in his right leg from his hip to his ankle. He has pain in his low back every day all the time. Too much walking will make the pain worse, as will bending and twisting. He can drive from 30 to 40 minutes before it starts to hurt. He only feels comfortable lifting 15 to 20 pounds and does not try to lift anything heavier.

Dr. Gregory Walker, a board certified neurological surgeon, examined claimant on August 17, 2005, at the request of claimant's attorney. Claimant complained to Dr. Walker of midline and right-sided lower back pain radiating into the medial thigh and knee on the right side. Sitting and prolonged walking aggravated the pain.

Dr. Walker concluded that claimant is symptomatic after having undergone a lumbar discectomy at L3-4 for a far lateral disk herniation. Using the AMA *Guides*,[5] Dr. Walker rated claimant as having a 23 percent whole person impairment for the lumbar spine under the diagnosis related estimate (DRE) Category IV model. Dr. Walker testified that claimant no longer had loss of segment integrity, since he had a fusion. Due to the fact that claimant had significant radicular features to his problem with definite weakness and loss of reflexes, Dr. Walker gave him an additional 3 percent permanent partial impairment over the Category IV 20 percent. He opined that claimant's medical condition is directly related to the industrial accidents occurring on July 9, 2000, and September 26, 2002. He testified that "the majority of his disability in his lower back came following the second accident in my impression from looking through the records."[6] Dr. Walker believed that claimant's cervical spine and lumbar spine condition should limit him to lifting no more than 20 pounds. Claimant should also avoid frequent bending or twisting at the waist.

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[5] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

[6] Walker Depo. at 21.

Limitations Dr. Walker placed on claimant solely because of the September 26, 2002, low back injury are no frequent bending at the waist and a lifting restriction of 20 pounds. He later stated that claimant could occasionally lift or carry 30 pounds.

Dr. Chris Fevurly, who is board certified in internal medicine and in preventative medicine with a specialization in occupational medicine, examined claimant on April 26, 2006, at the request of respondent's attorney. He reviewed the past medical records for claimant's two work-related injuries and took a history from claimant.

Claimant complained of persistent numbness in his right leg which radiated along the right medial thigh down the right posterior calf into the ankle. He had occasional pain into the right leg which he described as a stabbing right knee pain. He has an ache and numbness in his low back which is fairly constant but which had improved but not resolved completely after his fusion. The low backache and right leg numbness are aggravated by prolonged sitting or lifting greater than 40 pounds.

Dr. Fevurly concluded that the work injury of September 26, 2002, resulted in low back pain, a right sided L3-4 disc herniation, and residual right leg L3 radiculopathy. Although claimant had degenerative disc disease as a natural consequence of living and aging and chronic use of cigarettes, Dr. Fevurly opined that the September 26, 2002, injury aggravated the preexisting degenerative disc disease in the lumbar spine. But Dr. Fevurly assigned no impairment for claimant's prior back condition. In other words, his rating for claimant's preexisting back condition was zero percent.

Dr. Fevurly stated that claimant had reached maximum medical improvement from the September 26, 2002, injury on June 17, 2004. He rated claimant as having a 10 percent whole person impairment as a result of the September 26, 2002, low back injury using the Category III model in the AMA *Guides*. He gave claimant permanent restrictions of lifting up to 45 pounds from floor to waist on an occasional basis, frequent lifting limited to 35 pounds, and repetitive lifting limited to 20 pounds. He would also restrict against prolonged forward flexion at the waist at greater than 45 degrees. Dr. Fevurly related those restrictions to claimant's September 26, 2002, injury. As for preexisting restrictions for the 2000 injury, Dr. Fevurly said:

> About the only restrictions I would have given him from that first injury would have been avoidance of prolonged or nonstop forceful overhead work with the right arm, otherwise I think he was free to return to his former duties. I did not think that he had to have restrictions in regards to lifting and, in fact, he continued to do his usual work, I believe, for about another, oh, gosh, it would have been another two years after that.[7]

[7] Fevurly Depo. at 15.

> Q. (By claimant's attorney) What I'm trying to figure out, when we do this task list you're saying prolonged forceful overhead activities and that is impossible to define?
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> A. No, I think it would be very difficult to define, and I don't think you could meet every criteria that would really define what I believe that he shouldn't try to do. He does have a rotator cuff tear that was repaired, and he had an impingement. I think that he can do frequent overhead work, I don't think I'd want him to do forceful pushing and pulling overhead, and I don't have really any ability to quantify that by poundage.[8]

In the final analysis, Dr. Fevurly said that there was only one task he eliminated using the no forceful overhead work restriction from the 2000 injury.[9] But Dr. Fevurly also noted that claimant was able to return to work and perform his regular job after the 2000 injury.

> Q. (By claimant's attorney) Now, in your narrative report you had one italicized sentence, and it says, on the top of page four: He missed no work during or after the first work injury that occurred on July 9, 2000. Is there a reason that that half a sentence was italicized?
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> A. It made the point that he had no apparent restrictions or limitations following recovery from the first event.[10]

Doug Lindahl, a vocational rehabilitation counselor, met with claimant on December 13, 2005, and together they prepared a list of 36 tasks that claimant performed since 1985. By eliminating the jobs claimant performed before 1987, the task list can be corrected to reflect only the relevant 15-year work history before the September 26, 2002, accident that is the subject of this claim. That would mean eliminating one job, the job of truck driver for Snider Gravel and Concrete. Mr. Lindahl had 7 tasks listed for that job, leaving 29 tasks for the jobs claimant performed after September 1987 until his September 26, 2002, accident.

Mr. Lindahl noted that claimant has a high school diploma and on-the-job training in heating and air conditioning. A job in heating and air conditioning, however, would be eliminated because of claimant's physical restrictions, as would be careers in plumbing, maintenance, and truck driving. In reviewing the job market within a 30-mile radius of claimant's home, and then expanding the search, Mr. Lindahl found 127 job openings but did not find any jobs within claimant's restrictions or his education and training. Using Dr.

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[8] *Id.* at 36-37.

[9] *Id.* at 38.

[10] *Id.* at 34.

Walker's restrictions, Mr. Lindahl believed claimant would be capable of light duty and/or sedentary jobs, possibly in retail sales. He opined that claimant was able to earn from minimum wage up to $7 per hour in those types of jobs. Also, fringe benefits would probably not be available in an entry level position. Mr. Lindahl stated that claimant probably would not have the ability to compete for a job as a dispatcher, since claimant had the impression that he was terminated because he was not doing an adequate job in that position.

Karen Terrill, a vocational rehabilitation consultant, met with claimant at the request of respondent's attorney on April 27, 2006. She and claimant prepared a list of tasks that claimant performed during the 15-year-period before his first accident in 2000. She did not prepare a separate task list for the 15-year period before claimant's accident of September 26, 2002. However, a review of claimant's work history shows that the task list would be the same using the later accident date, but with one exception. The job as a truck driver with Snider Gravel and Concrete should be eliminated because claimant only worked there in 1985, which is more than 15 years before the September 26, 2002, accident.

Ms. Terrill considered claimant's education, training, experience and restrictions and believed that he would be capable of working as a hand packager or a light delivery driver. She opined that he retained the ability to earn a median wage of $8.39 and a mean wage of $8.95 per hour as a hand packager and a median wage of $10.47 and a mean wage of $11.50 per hour as a light delivery driver. Ms. Terrill said she considered the restrictions recommended by Dr. Walker in formulating her opinions, but using Dr. Fevurly's restrictions would not change her opinion. Using Dr. Fevurly's restrictions might open up additional jobs but would not change claimant's wage-earning ability.

When Ms. Terrill considered jobs claimant could perform, she took into account jobs that would fall in industries in which he had experience or that would be suited to him. She testified that "even though he could be a telemarketer, I don't have that listed because this is a gentleman who has done hands-on type activity, and as a result I tried to focus more on jobs that would be more representative of the jobs he displayed in the past."[11] She also stated: "He's got good communication skills, which would be important for the telemarketing industry. However, he did not impress me that he could sell ice water in that famous hot spot."[12]

Dr. Walker reviewed the task list prepared by Douglas Lindahl and opined that claimant had lost the ability to perform 23 of the 36 task for a 64 percent task loss. Dr. Walker indicated that claimant would not be able to drive a truck, but on cross-examination admitted that there are many variables and that claimant could, under the right

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[11] Terrill Depo. at 31.

[12] *Id.* at 32.

circumstances, drive a truck. He stated: "I think the most important thing in truck driving is do they have to unload their own truck."[13] The ALJ treated this as one/half a task loss and found that Dr. Walker had assessed claimant with a 62.5 percent task loss. The task description as prepared by claimant and Mr. Lindahl shows that loading and unloading was not part of the job task as claimant actually performed it during his 15-year work history. Accordingly, that task probably should not have been eliminated either entirely or as a half. But since the truck driver job was outside the relevant 15-year period, it should not be included in claimant's task list. Utilizing Dr. Walker's opinions without the Snider Gravel and Concrete job results in claimant having lost the ability to perform 18 of the 29 tasks left on Mr. Lindahl's list for a 62 percent task loss.

Dr. Fevurly reviewed a task list prepared by Karen Terrill. Based upon his recommended restrictions, Dr. Fevurly concluded that claimant would be unable to perform 15 tasks out of the 33 nonduplicative tasks on Ms. Terrill's list, for a task loss of 45.5 percent.[14] The list that Dr. Fevurly considered did not include any tasks from the Snider Gravel and Concrete job.

The average of Dr. Walker's 62 percent task loss opinion and Dr. Fevurly's 45.5 percent opinion is 53.75 percent. This rounds off to the same 54 percent task loss that the ALJ found.

Permanent partial disability under K.S.A. 44-510e(a) is defined as the average of the claimant's work task loss and wage loss. But, it must first be determined that a worker has made a good faith effort to find appropriate employment before the difference in pre- and post-injury wages based on the actual wages can be used. If it is determined that a good faith effort has not been made, then an appropriate post-injury wage will be imputed based on all the evidence, including expert testimony concerning the capacity to earn wages.[15]

The Kansas appellate courts have also interpreted K.S.A. 44-510e(a) to require workers to make a good faith effort to continue their employment post injury. The courts have held that a worker who is capable of performing accommodated work should advise the employer of his or her medical restrictions and should afford the employer a reasonable opportunity to adjust the job duties to accommodate those restrictions. Failure to do so is evidence of a lack of good faith. Additionally, permanent partial general disability benefits are limited to the functional impairment rating when the worker refuses to attempt,

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[13] Walker Depo. at 33.

[14] The ALJ found this to be 45.45 percent, but 15 out of 33 actually results in a 45.46 percent task loss, which can be rounded to either 45.5 percent or 46 percent.

[15] *Copeland v. Johnson Group, Inc.*, 26 Kan. App. 2d 803, 804, 995 P.2d 369 (1999), *rev. denied* 269 Kan. 931 (2000).

voluntarily quits, or is terminated from a job that the worker is capable of performing that pays at least 90 percent of the pre-accident wage where the termination is for reasons that demonstrate a lack of good faith by the worker.[16]

The Kansas Court of Appeals in *Watson*[17] reiterated that the failure to make a good faith effort to find appropriate employment does not automatically limit the permanent partial general disability to the functional impairment rating. Instead, the court reiterated that when a worker failed to make a good faith effort to find employment, the post-injury wage for the permanent partial general disability formula should be based upon all the evidence, including expert testimony concerning the capacity to earn wages.

> In determining an appropriate disability award, if a finding is made that the claimant has not made a good faith effort to find employment, the factfinder must determine an appropriate post-injury wage based on all the evidence before it. This can include expert testimony concerning the capacity to earn wages.[18]

Furthermore, unemployment or job change due to economic change, such as a layoff, can result in a work disability.[19] In *Lee*,[20] it was stated:

> It is not the intent of the legislature to deprive an employee of work disability benefits after a high-paying employer discharges him or her as part of an economic layoff where the employer was accommodating the injured employee at a higher wage than the employee could earn elsewhere.

Retaining an employee in a job that pays a comparable wage artificially avoids a work disability until the worker is exposed to the open labor market wherein a work disability may be revealed.[21]

The Board agrees with the ALJ and finds that claimant demonstrated a good faith effort to perform his accommodated job with respondent post injury. Thereafter, claimant made a good faith job search. It was not unreasonable for claimant to refuse work that

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[16] See, *e.g.*, *Parsons v. Seaboard Farms, Inc.*, 27 Kan. App. 2d 843, 9 P.3d 591 (2000); *Oliver v. Boeing Co.*, 26 Kan. App. 2d 74, 977 P.2d 288, *rev. denied* 267 Kan. 889 (1999); *Lowmaster v. Modine Mfg. Co.*, 25 Kan. App. 2d 215, 962 P.2d 1100, *rev. denied* 265 Kan. 885 (1998);*Cooper v. Mid-America Dairymen*, 25 Kan. App. 2d 78, 957 P.2d 1120, *rev. denied* 265 Kan. 884 (1998).

[17] *Watson v. Johnson Controls, Inc.*, 29 Kan. App. 2d 1078, 36 P.3d 323 (2001).

[18] *Id.* at Syl. ¶ 4.

[19] *Gadberry v. R.L. Polk & Co.*, 25 Kan. App. 2d 800, 975 P.2d 807 (1998).

[20] *Lee v. Boeing*, 21 Kan. App. 2d 365, Syl. ¶ 3, 899 P.2d 516 (1995).

[21] *Watkins v. Food Barn Stores, Inc.*, 23 Kan. App. 2d 837, 838-39, 936 P.2d 294 (1997).

paid less than and would jeopardize his unemployment benefits. In *Bohanan,*[22] the court found claimant's refusal to perform jobs that were outside her restrictions or were temporary or that would not restore her to a wage that was comparable to her preinjury wage did not constitute a lack of good faith so as to invoke the policy considerations of *Foulk*.[23] Therefore, *Bohanan* was not denied a work disability award.

The Board finds that claimant has made a good faith job search. It was not unreasonable for claimant to decline the low-paying job at the convenience store. Accordingly, that wage should not be imputed for determining claimant's permanent partial general disability. This Board has previously held that an injured worker is not required to accept the first low-paying job that comes along. The law requires an injured worker to seek appropriate employment. And whether a job is appropriate depends upon all the circumstances, including, among other factors, the distance to the job, the physical requirements of the position, and the expected compensation. Based upon these facts, the convenience store job was not appropriate. Accordingly, claimant's actual post-injury wage should be used to compute his percentage of partial general disability. Claimant's wage loss is 100 percent.

Averaging the 100 percent wage loss with the 54 percent task loss results in a work disability of 77 percent. This 77 percent work disability would commence the date claimant last worked for respondent. Before that, claimant's permanent partial disability would be limited to the percentage of his functional impairment, 10 percent, because he was working for respondent in an accommodated job that paid him at least 90 percent of his preinjury wage.[24]

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated August 31, 2006, is modified to find that claimant suffered a 10 percent permanent partial impairment from the date of the injury, September 26, 2002, until the last day of his employment with respondent on October 28, 2005. Thereafter, beginning October 29, 2005, claimant's work disability would be 77percent.

Claimant is entitled to 60.43 weeks of temporary total disability compensation at the rate of $432.00 per week or $26,105.76, followed by 36.96 weeks of permanent partial disability compensation at the rate of $432 per week or $15,966.72 for a 10 percent

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[22] *Bohanan v. U.S.D. No. 260*, 24 Kan. App. 2d 362, 947 P.2d 440 (1997).

[23] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 877 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995)

[24] Hood Depo. (Nov. 9, 2005), Ex. 1.

functional disability, followed by permanent partial disability compensation at the rate of $432 per week not to exceed $100,000 for a 77 percent work disability.

As of December 15, 2006, there would be due and owing to the claimant 60.43 weeks of temporary total disability compensation at the rate of $432 per week in the sum of $26,105.76, plus 35.67 weeks of permanent partial disability compensation at the rate of $432 per week in the sum of $15,409.44, for a total due and owing of $41,515.20, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of $58,484.80 shall be paid at the rate of $432 per week until fully paid or until further order from the Director.

IT IS SO ORDERED.

Dated this _____ day of December, 2006.

_____
BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge

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KANSAS DIVISION OF WORKERS COMPENSATION

DENNIS WURTZ	)	
Claimant	)	
	)	
VS.	)	
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HOOD HEATING AND AIR CONDITIONING	)	
	)	
Respondent	)	Docket No. 1,010,775
	)	
AND	)	
	)	
ALLIED INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER NUNC PRO TUNC

The Board has been made aware of an error in calculating the award in its Order entered in this case on December 14, 2006. That Award is corrected to read:

> **WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated August 31, 2006, is modified to find that claimant suffered a 10 percent permanent partial impairment from the date of the injury, September 26, 2002, until the last day of his employment with respondent on October 28, 2005. Thereafter, beginning October 29, 2005, claimant's work disability would be 77 percent.
>
> Claimant is entitled to 60.43 weeks of temporary total disability compensation at the rate of $432 per week or $26,105.76, followed by 36.96 weeks of permanent partial disability compensation at the rate of $432 per week or $15,966.72 for a 10 percent functional disability, followed by permanent partial disability compensation at the rate of $432 per week not to exceed $100,000 for a 77 percent work disability.
>
> As of December 15, 2006, there would be due and owing to the claimant 60.43 weeks of temporary total disability compensation at the rate of $432 per week in the sum of $26,105.76, followed by 36.96 weeks of permanent partial disability compensation at the rate of $432 per week in the

sum of $15,966.72. Thereafter, beginning October 29, 2005, claimant is due 58.86 weeks of permanent partial disability compensation at the rate of $432 per week in the sum of $25,427.52, for a total due and owing of $67,500, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of $32,500 shall be paid at the rate of $432 per week until fully paid or until further order from the Director.

All other statements, findings and conclusions in the Board's Order shall remain as originally stated.

IT IS SO ORDERED.

Dated this _____ day of December, 2006.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge